

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9290 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KAYYUM NOORAYYUB SHEIKH

Versus

STATE OF GUJARAT

Appearance:

MR MM TIRMIZI for Petitioner

MR KAMAL MEHTA, APP for Respondent No. 1

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 19/03/98

ORAL JUDGEMENT

By this petition, under Article 226 of the Constitution of India, the petitioner who is the detenu calls in question the legality and validity of the order of detention passed by the Commissioner of Police, Ahmedabad City on 25th September, 1997, invoking Section 3(2) of the Prevention of Anti-Social Activities Act (hereinafter referred to as "the Act").

2. In order to appreciate the rival contentions, necessary facts in brief may be stated. The Commissioner of Police for the city of Ahmedabad was having the information that the petitioner by his nefarious activities was disturbing the public peace and terrorising the people. The people were feeling insecure. He, therefore, inquired into the matter and examined different records of the Police Stations under him. He could know that about four complaints were lodged against the petitioner of the offences punishable under Sections 379, 457, 380, 461 of the Indian Penal Code, read with Section 114 of the Indian Penal Code, with Ghatlodia Police Station and Satellite Police Station. The Commissioner of Police having come to know about such complaints made detailed inquiry, and after inquisition, he could note that the petitioner was a head-strong person and by his subversive activities, he was disturbing the public order and terrorising the people. He was extorting money, causing injuries and/or causing damage to the properties. By diabolism, he used to cause the people to bend his way. His hellish and infernal activities disturbing public order and spreading pandemonium were going berserk. No one was, therefore, ready to come forward and state against him. After a great persuasion and when assurance was given that the facts about them disclosing their identity would be kept secret, some of the witnesses have under great tension stated against the petitioner. After the deep inquiry, the Police Commissioner found that to curb the anti-social subversive and chaotic activities of the petitioner, unspeakable diabolism terrorising the society, and upsetting the public order and leading to anarchy, ordinary law was falling short and was sounding dull. The only way out to hold him in kittle was to detain him under the Act. He, therefore, passed the impugned order. Consequent upon the same, the petitioner came to be arrested and at present, he is in custody.

3. On behalf of the petitioner, challenging the legality and validity of the order of detention, several grounds raised in the petition were being covered at length by the learned advocate representing the petitioner, but after I put up several queries, both the learned advocates representing the parties tapered off their submissions, confining to the only point namely exercise of privilege under Section 9(2) of the Act. I will therefore confined to that point alone going to the root of the case and would not dwell upon the other points.

4. Before I proceed, it would be better if the law

about the non-disclosure of certain facts is elucidated. Reading Article 22(5) of the Constitution of India, what becomes clear is that the grounds on which order of detention is passed are required to be communicated to the detenu. The detenu is, therefore, required to be informed not merely factual inference and factual material which led to inference namely not to disclose certain facts, but also the sources from which the factual material is gathered. The disclosure of sources can enable the detenu to draw the attention of the detaining authority in the course of his representation to the fact whether the factual material collected from such sources would be relied upon and used against him on the facts and circumstances of the case. Subject to the limitation mentioned in Article 22(6) of the Constitution of India and Section 9(2) of the Act, the detaining authority is of course empowered to withhold such facts and particulars, the disclosure of which he considers to be against the public interest. The privilege of non-disclosure has to be exercised sparingly and in those cases, where public interest dictating non-disclosure overrides the public interest requiring disclosure. Hence the detaining authority must be fully satisfied on the basis of overall study that the apprehension expressed by the informant is honest, genuine and reasonable in the circumstances of the case. With a view to satisfy itself whether the fear of violence and consequential feelings of insecurity or apprehension of a wrong would be done to them at anytime by the detenu by those making statement against the detenu is imaginary or fanciful; or an empty excuse or well-founded for disclosing or not disclosing certain facts or particulars of those persons, the authority making the order has to make necessary inquiry applying his mind. What can be deduced from such constitutional as well as legal scheme whereunder obligation to furnish the grounds and the duty to consider whether the disclosure of any facts involved therein is against public interest are both vested in the detaining authority and not in any other. The authority passing the order of detention has to apply his mind and should itself be satisfied to the question whether or not the supply of the relevant particulars and materials would be injurious to the public interest. If the task of recording statements and necessary inquiry is entrusted to others, and if he mechanically endorses or accepts the recommendation of others or subordinate authority in that behalf without applying mind and taking his own decision, the exercise of power would be vitiated as arbitrary. What is further required is that the detaining authority must file his affidavit to satisfy the court that he had sincerely and honestly applied the

mind for the bonafide exercise of the powers about disclosure and privilege regarding non-disclosure so that the court can examine rational connection between the ground disclosed or not disclosed in public interest. If no affidavit explaining the exercise of the power is filed, the court can infer against the detaining authority. If the affidavit is filed explaining the exercise of the power, the detenu may challenge the privilege exercised on the ground that the same is vitiated by factual or legal malafides. For my such view, a reference to a decision in the case of Bai Amina, W/o. Ibrahim Abdul Rahim Alla Vs. State of Gujarat and others - 22 G.L.R. 1186 held to be the good law by the Full Bench of this Court in the case of Chandrakant N.Patel Vs. State of Gujarat & Others 35(1) [1994(1)] G.L.R. 761. may be made.

5. In view of such law, the authority passing the detention order has to satisfy the Court that it was absolutely necessary in the public interest to suppress the particulars of the witnesses keeping their safety in mind. In this case, it is pertinent to note that the Police Commissioner has not filed affidavit. The Commissioner of Police accepted the report made by the Police Officers to whom he had entrusted the task of inquiry. It may be stated that the Police Commissioner may put trust in the officers for making necessary inquiry, and the officer may be honest and sincere in his duties, but to accept his report without application of mind is not permissible in law. In the order of detention it is made clear that the report received was accepted. There is, therefore, no personal application of mind to the relevant facts. It can, therefore, be said that for not disclosing particulars about the witnesses, the case is not made out, and therefore, the privileged is not rightly exercised. With the result the petitioner could not get sufficient material to decide whether any defence was available, and so his right to make effective representation was jeopardised. The continued detention is illegal and the same is required to be quashed and set aside.

6. For the aforesaid reasons, this petition is allowed. The order of detention passed on 25th September, 1997, by the Police Commissioner, Ahmedabad City, is hereby quashed and set aside, and the petitioner-detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule accordingly made absolute.

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